

Robert F. Kennedy Medical Center and Robert F. Kennedy Nurses Association, United Nurses Associations of California, Union of Health Care Professionals, NUHHCE, AFSCME, AFL-CIO, Petitioner. Case 31-RC-7915

October 1, 2001

DECISION AND CERTIFICATION OF
RESULTS OF ELECTION
BY CHAIRMAN HURTGEN AND MEMBERS
LIEBMAN
AND TRUESDALE

The National Labor Relations Board, by a three-member panel, has considered objections to an election held October 12, 2000, and the hearing officer's report recommending disposition of them. The election was conducted pursuant to a Stipulated Election Agreement. The tally of ballots shows 50 for and 53 against the Petitioner, with 7 challenged ballots.¹

The Board has reviewed the record in light of the exceptions and brief, has adopted the hearing officer's findings,² and recommendations, and finds that a certification of results of election should be issued.

Petitioner's Objection 2 alleges, *inter alia*, that the election should be set aside because the doors to the polling place were locked during the third voting period. The hearing officer overruled this objection. Contrary to our dissenting colleague, we agree with the hearing officer.

The election was conducted in a room located within the Employer's cafeteria. The record establishes that there were two entrances to the Employer's cafeteria. One entrance was from a set of double doors proceeding from a hallway and the other entrance was from a single door proceeding directly from the Employer's main lobby area. The signs directing voters to the polling place were posted by the double door entrance.

Although the double door entrance was unlocked when the third polling period began, sometime after the voting period commenced one of the Board agents conducting the election discovered that the double door entrance was locked. The Board agent requested hospital security to unlock the double doors. While waiting for hospital security to arrive to unlock the doors, the Board agent repositioned two of the signs from the double door entrance to the single door entrance. Shortly thereafter, hospital secu-

urity arrived to unlock the door. The Board agent estimated that the double doors were locked for about 10–15 minutes.

The single door entrance to the cafeteria is unlocked 24 hours a day. This entrance, proceeding directly to the main lobby, is used by employees on a daily basis.

In view of the fact that the single door entrance to the cafeteria was unlocked during the entire polling period, and considering that it was off the main lobby and regularly used by employees, we find the evidence insufficient to support a finding that employees were potentially disenfranchised by the double door entrance being locked for a short period during the final voting session. Contrary to our dissenting colleague, we do not believe that either *Whatcom Security Agency*, 258 NLRB 985 (1981), or *Wolverine Dispatch, Inc.*, 321 NLRB 796, 797 (1996), warrant a different result. In both of those cases, the election was set aside because the polling place was inaccessible for a certain period of time during the polling period. Here, as noted above, the polling place was always accessible through the single door entrance off the main lobby, an entrance that was regularly used by employees. That this entrance was not posted as an entrance to the polling place during the *entire* time the double doors were locked does not change the fact that this was a well-known and easily accessible entrance. Accordingly, we adopt the hearing officer's recommendation to overrule this objection.³

CERTIFICATION OF ELECTION

It is certified that a majority of the valid ballots have not been cast for Robert F. Kennedy Nurses Association, United Nurses Associations of California, Union of Health Professionals, NUHHCE, AFSCME, AFL-CIO, and that it is not the exclusive representative of these bargaining unit employees.

MEMBER LIEBMAN, dissenting.

Petitioner's Objection 2 alleges that a new election is necessary because access to the polling site was obstructed. Record evidence supports that objection. Because a determinative number of employees were potentially disenfranchised as a result of the obstructed access, I would find that a new election is necessary to safeguard the integrity of the election process. See *Whatcom Security Agency*, 258 NLRB 985 (1981).

The election in this case was conducted during three sessions. During the final session, the polls were to be accessible from 6–8:30 p.m. in a room adjoining the Em-

¹ Prior to the hearing, the parties entered into a stipulation agreement sustaining the challenges to the seven ballots.

² The Petitioner has excepted to some of the hearing officer's credibility findings. The Board's established policy is not to overrule a hearing officer's credibility resolutions unless a clear preponderance of all the relevant evidence convinces us they are incorrect. *Stretch-Tex Co.*, 118 NLRB 1359 (1957). We have carefully examined the record and find no basis for reversing the findings.

³ In adopting the hearing officer's recommendation to overrule Objection 2, we find it unnecessary to rely on the hearing officer's application of *Kalin Construction Co.*, 321 NLRB 649, 657 (1996), to this case.

ployer's cafeteria. The cafeteria has two entrances: a set of double doors proceeding from a hallway and a single door proceeding directly from the main lobby. In preparing the polling site, one of the two Board agents conducting the election placed signs leading to and in the vicinity of the double door entrance. He posted no sign near the single-door entrance. Although he testified that the double doors were open when the third session began at 6 p.m., it is undisputed that the doors were subsequently locked. This was not discovered until sometime between 6:35 and 6:45, when one of the Board agents was checking the election signs posted earlier. The agent then unsuccessfully attempted to contact the Employer's representative, who was not then available, and searched the lobby for assistance. He finally spoke with an employee in the Employer's communications room, who said that someone from security was not immediately available, but could come about 10 minutes later to unlock the doors. This agent located signs to the single door entrance that had not been previously posted, and returned to the polling place to report this information to the other agent conducting the election. About 10 minutes later, the first agent verified that the doors had been unlocked.

Clearly, the entrance to the polling site, and the only one initially posted as such, was locked for an indefinite, but substantial period of time during the final voting session. While another, unposted entrance to the polling site may have been available, that does not lessen the significance of the obstruction of the posted access route to the polling area.¹ Employees who came to vote may well have failed

to discover and use this alternative entrance. It is also clear that a determinative number of voters were potentially disenfranchised. The mutually agreed upon eligibility list included 115 names. The final tally showed that 50 votes were cast for the Petitioner, and 53 were cast against it. There were seven challenged ballots. Five of these voters were challenged by a Board agent because they were not included on the eligibility list, leaving at most two who were challenged by the parties for other reasons (and who apparently had been included on the eligibility list). This leaves 10 eligible voters who were on the eligibility list who have not been accounted for, and who therefore may have been disenfranchised by the absence of a posted, unlocked entrance to the polls during the final session. These 10 eligible voters could have determined the outcome of the election, which the Petitioner lost by three votes.

To maintain the integrity of its own election proceedings, the Board applies an objective standard: whether the number of employees possibly disenfranchised by an election irregularity is sufficient to affect the election outcome. *Wolverine Dispatch, Inc.*, 321 NLRB 796, 797 (1996). The Board does not require a showing that employees were actually disenfranchised. *Id.* Adhering to this objective standard, I would find that the evidence presented to the hearing officer requires that this election be set aside.

that a change in routing or access to the polls did not amount to objectionable conduct, no exceptions were filed on that issue and the Board did not address it. Further, the facts in that case were very different. Most significantly, as the judge found, the "voters were not prevented or in any way hindered from entering the voting room." *Id.* at 657. Here, it is reasonable to infer that voters were at least hindered by the locked doors.

¹ The hearing officer's reliance on *Kalin Construction Co.*, 321 NLRB 649 (1996), is misplaced. Although the judge in that case found